

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)	
)	
v.)	ID No. 9911016309
)	
MICHAEL L. JONES,)	
)	
Defendant.)	

Date Submitted: December 16, 2019
Date Decided: March 16, 2020

ORDER

Upon consideration of Defendant’s Motion for Postconviction Relief (“Motion”),¹ the State’s Motion for Summary Dismissal,² Superior Court Criminal Rule 61, statutory and decisional law, and the record in this case, **IT APPEARS THAT:**

1. On January 27, 2005, Defendant, a juvenile, was found guilty of three counts of Murder First Degree, 3 counts of Conspiracy First Degree, six counts of Possession of a Firearm During the Commission of a Felony (“PFDCF”), Robbery First Degree, Arson Second Degree, Conspiracy Second Degree, and Endangering the Welfare of a Child.³ In February 2005, following a three-day penalty hearing, the jury recommended Defendant be sentenced to death.⁴ Before Defendant was

¹ D.I. 324.

² D.I. 326.

³ D.I. 102.

⁴ D.I. 133.

sentenced, the United States Supreme Court held that juveniles were ineligible for the death penalty.⁵

2. On September 16, 2005, Defendant was sentenced as follows: for each count of Murder First Degree, the balance of his natural life at Level 5; for each count of PFDCF, 5 years at Level 5; for Robbery First Degree, 5 years at Level 5; for Arson Second Degree, 1 year at Level 5; for each count of Conspiracy First Degree, 2 years at Level 5; for Conspiracy Second Degree, 1 year at Level 5; and for Endangering the Welfare of a Child, 1 year at Level 5.⁶ On December 12, 2007, the Delaware Supreme Court affirmed Defendant's conviction.⁷

3. On May 21, 2008, Defendant filed his first motion for postconviction relief ("First Motion").⁸ On September 3, 2008, the Court denied the First Motion.⁹ On March 9, 2009, the Delaware Supreme Court affirmed the judgment.¹⁰

4. On June 23, 2009, Defendant filed a petition for a writ of habeas corpus in the District Court of Delaware ("Habeas Petition").¹¹ On September 28, 2012, the

⁵ See *Roper v. Simmons*, 543 U.S. 551 (2005).

⁶ D.I. 163.

⁷ D.I. 220. Prior to affirming the conviction, the Delaware Supreme Court remanded the case for an evidentiary hearing on Defendant's *Batson v. Kentucky*, 476 U.S. 79 (1986), claim. D.I. 202.

⁸ D.I. 225.

⁹ D.I. 234.

¹⁰ D.I. 237.

¹¹ *Jones v. Phelps*, 2012 WL 4600639 (D. Del. Sept. 28, 2012).

District Court denied the Habeas Petition.¹² On January 30, 2015, the Third Circuit affirmed the District Court judgment.¹³

5. In July 2013, while the Habeas Petition was pending, Defendant moved to vacate his sentence. Defendant argued that his mandatory life sentence without parole violated the Eighth Amendment because he was a juvenile when he committed the crimes.¹⁴ On September 17, 2014, Defendant filed a motion to dismiss current counsel and to appoint conflict counsel.¹⁵ On December 20, 2013, conflict counsel was appointed (“Resentencing Counsel”).¹⁶ On June 30, 2014, for each count of Murder First Degree, Defendant was re-sentenced to natural life at Level 5.¹⁷ Defendant did not file a direct appeal.

6. On June 22, 2015, Defendant, through Resentencing Counsel, filed his second motion for postconviction relief (“Second Motion”).¹⁸ On November 24, 2015, the State filed a Motion for Summary Dismissal, arguing that the Second Motion was barred as untimely and repetitive.¹⁹ On December 16, 2016, the Court

¹² *Id.*

¹³ *Jones v. Phelps*, 599 F. App’x 433 (3d Cir. 2015), *cert. denied sub nom Jones v. Pierce*, 135 S. Ct. 2818 (2015).

¹⁴ *See Miller v. Alabama*, 567 U.S. 460 (2012).

¹⁵ D.I. 243.

¹⁶ D.I. 246.

¹⁷ D.I. 252.

¹⁸ D.I. 259.

¹⁹ D.I. 280.

summarily dismissed the Second Motion.²⁰ On October 10, 2017, the Delaware Supreme Court affirmed the judgment.²¹

7. On July 19, 2018, Defendant filed his third motion for postconviction relief (“Third Motion”), arguing that Resentencing Counsel was ineffective for failing to: (1) appeal his resentencing; (2) timely filing the Second Motion; (3) file a third motion for postconviction relief; and (4) conduct a survey of all re-sentenced juveniles to show that his re-sentencing was disproportionate to other Delaware juvenile offenders.²² On October 26, 2018, Resentencing Counsel filed an affidavit responding to Defendant’s ineffective assistance of counsel claims.²³ On January 30, 2019, the Third Motion was summarily dismissed.²⁴ On May 31, 2019, the Delaware Supreme Court affirmed the judgment,²⁵ and stated:

Jones contends that, because his motion alleged ineffective assistance of counsel on the part of Appointed Counsel in the re-sentencing proceedings and in the proceedings on Jones’ second motion for postconviction relief, it was timely filed within one year of this Court’s denial of his second motion for postconviction relief. Jones is mistaken. We have held that fairness dictates that a defendant may bring a claim of ineffective assistance of postconviction counsel within one year of the defendant’s appeal to this Court from the Superior Court’s denial of his first motion for postconviction relief. Jones is not entitled to bring a claim of ineffective assistance of counsel against postconviction counsel in subsequent postconviction proceedings. The Court concludes the Superior Court did not err in its determination that Jones’

²⁰ D.I. 296 (after a hearing and considering numerous filings).

²¹ D.I. 301.

²² D.I. 302.

²³ D.I. 311.

²⁴ D.I. 319.

²⁵ D.I. 323.

third motion for postconviction relief was procedurally barred and that Jones had failed to overcome the procedural hurdles by pleading with particularity either that: (i) new evidence exists creating a strong inference that he is actually innocent; or (ii) a new, retroactively applicable rule of constitutional law renders his conviction invalid. Because Jones' motion was properly summarily dismissed under Rule 61, the Superior Court did not abuse its discretion in declining to appoint counsel to represent him in these proceedings.²⁶

8. On September 19, 2019, Defendant filed the Motion (his fourth motion for postconviction relief), asking for his appellate rights to be reinstated so he can file a direct appeal.²⁷ Defendant asserts that his appellate rights should be reinstated because Resentencing Counsel did not file a direct appeal.²⁸

9. On December 16, 2019, the State filed its Motion for Summary Dismissal, asserting that the Motion is barred as untimely and repetitive.²⁹

10. Prior to considering the merits of a motion for postconviction relief, the Court must determine whether any of the procedural bars under Superior Court Criminal Rule 61 are applicable.³⁰ Pursuant to Rule 61, a motion for postconviction relief can be procedurally barred for time limitations, repetitive motions, procedural defaults, and former adjudications.³¹

²⁶ *Jones v. State*, 2019 WL 2121105, at *1 (Del. May 13, 2019).

²⁷ D.I. 324.

²⁸ *Id.* (Ex. A).

²⁹ D.I. 326.

³⁰ *See Bradley v. State*, 135 A.3d 748, 756–57 (Del. 2016) (citing *Younger v. State*, 580 A.2d 552, 554 (Del. 1990)); *see also* Super. Ct. Crim. R. 61(i) (setting forth Rule 61 procedural bars).

³¹ Super. Ct. Crim. R. 61(i)(1)–(4).

11. Pursuant to Rule 61(i)(1), a motion for postconviction relief “may not be filed more than one year after the judgment of conviction is final.”³² Defendant filed the Motion more than 10 years after the judgment of conviction was final. Therefore, the Motion is barred as untimely.

12. Pursuant to Rule 61(i)(2), no repetitive motions are permitted unless the repetitive motion satisfies the pleading requirements of Rule 61(d)(2).³³ Under Rule 61(d)(2), a repetitive motion “shall be summarily dismissed, unless the movant was convicted after a trial and the motion” pleads with particularity either that: (1) “new evidence exists that creates a strong inference that the movant is actually innocent in fact of the acts underlying the charges of which he was convicted,” or (2) “a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court or the Delaware Supreme Court, applies to the movant’s case and renders the conviction . . . invalid.”³⁴

13. As noted above, the Motion is Defendant’s fourth motion for postconviction relief. Therefore, the Court shall summarily dismiss the Motion unless Defendant pleads with particularity either that: new evidence exists creating a strong inference that he is actually innocent; or a new, retroactively applicable rule of constitutional law renders his conviction invalid. Defendant does not assert

³² Super. Ct. Crim. R. 61(i)(1).

³³ Super. Ct. Crim. R. 61(i)(2).

³⁴ Super. Ct. Crim. R. 61(d)(2).

claims of new evidence or a new, retroactively applicable rule of constitutional law.

Therefore, the Motion is barred as repetitive.

NOW, THEREFORE, Defendant's Motion for Postconviction Relief is
SUMMARILY DISMISSED.

IT IS SO ORDERED.

Jan R. Jurden

Jan R. Jurden, President Judge

Original to Prothonotary

cc: Michael L. Jones (SBI# 00417267)
Maria T. Knoll, DAG